

rules underlying the licensing of new commercial FM stations and, where necessary to introduce new FM service, the amendment of the FM Table of Allotments.³ NAB's request is based on technical, policy and economic considerations. NAB's petition points to the current economic condition of the industry, the tremendous growth in the number of FM stations and how such growth and existing allocation policy also has resulted in diminished FM technical quality for radio listeners. Taken as a whole, these factors strongly point to the need for the Commission to confront whether existing FM rules and policies are best suited for optimizing the radio service that will be available to this country's radio audience. Just as the Commission had undertaken -- and now completed -- a comprehensive review of its rules and policies governing the introduction and licensing of AM radio stations,⁴ so too does NAB urge the FCC to review its commercial FM station rules and policies.

Correspondingly, NAB believes the Commission would be remiss if, during the pendency of this policy review, it continued to authorize new FM service under policies and rules that are in dire need of reassessment and amendment. In this regard NAB points to the fact that, during the course of the agency's review of its AM broadcast rules, the Commission imposed

³As also expressed in NAB's Petition for Rule Making, we do not urge the Commission to review, or suspend, its process for introducing new noncommercial FM service.

⁴See Report and Order in MM Docket No. 87-267, 6 FCC Rcd 6273 (1991).

a "freeze" on virtually all new AM application processing.⁵ NAB believes that a similar, indeed more comprehensive, approach should be taken during the pendency of the FM policy review. This general suspension of all new facility authorization also would be important -- to the Commission especially -- as the agency explores its options relating to the authorization of digital audio broadcasting facilities.⁶

NAB urges that such a suspension be imposed as quickly as possible⁷ and that it continue until the time that the Commission has taken final action in the commercial FM policy proceeding that we recommend be undertaken. In light of the vast

⁵See Order in MM Docket No. 87-267, 5 FCC Rcd 2136 (1990). In this Order the FCC barred the filing and consideration, after April 5, 1990, of all applications for new or modified AM facilities, unless such applications met one of three small exceptions.

⁶See, e.g., Notice of Inquiry in Gen. Docket No. 90-357, 5 FCC Rcd 5237 (1990). This inquiry proceeding reviews several possible regulatory and policy alternatives for introducing digital audio broadcasting. By suspending the process of generally adding to the number of operating FM stations, the FCC will have a greater degree of certainty as to spectrum needs and technical factors that would be relevant to introduction of a terrestrial system, using either an "in-band" or "out-of-band" approach, whereby existing broadcasting licensees would be extended a digital opportunity.

⁷Moreover, and as the Commission did in the context of AM radio, the Commission need not seek public comment on this NAB request. Rather, the FCC has the authority and, we believe, the obligation, to impose such a suspension as quickly as possible. This suspension order could be issued contemporaneously with the FCC's adoption of a Notice of Proposed Rule Making responding to the merits of NAB's petition. In the alternative, the suspension order could be issued in conjunction with placing the NAB Petition on initial public notice, if the agency were not inclined to begin a rulemaking proceeding immediately.

number of FM stations currently serving the United States population and the number of FM CPs which have been granted but are not yet operating, the benefits to be enured from any near term increase in the number of stations, which might otherwise be realized during the course of the FM allotment and licensing policy review, would certainly be more than outweighed by the development and implementation of FCC FM policy more appropriately geared for the rest of this decade and beyond.⁸

Nonetheless, and also in view of the multiplicity of stations currently serving the listening audience, interim improvement of the service provided by already-operating stations should not be deferred. That is, during the course of this requested suspension of new facility authorization and rulemaking review, we believe the Commission should not cease allotment and licensing activity associated with improvement in existing service. Specifically, NAB urges the Commission, during the course of the policy review, to allow existing FM facility licensees to apply for upgraded facilities that would help meet any additional service needs perceived during the course of the

⁸In making this request, NAB urges the Commission to extend the breadth of the suspension order as far as legal and policy consideration will permit, excepting (as discussed below) petitions and applications seeking improvement of existing commercial FM facilities. That is, for purposes of the introduction of new commercial FM stations, we believe the suspension order should apply to all applicants that have not been granted a construction permit by the Commission. At the very least, the Commission's suspension order should bar the filing of new petitions to amend the Table of Allotments and new applications that would seek FM operation on fallow FM allotments not added to the Table by an applicant's earlier petition.

overall review of the Commission's licensing and allotment regulatory scheme.⁹

Conclusion

For the reasons stated herein and in the attached, incorporated by reference, NAB Petition for Rule Making, we urge the Commission to suspend, during the course of the requested rulemaking review, the general acceptance and processing of new station commercial FM allotment petitions and applications for new commercial FM stations. However, such suspension should not apply to efforts of existing FM broadcast stations to improve their facilities and enhance their service to radio listeners.

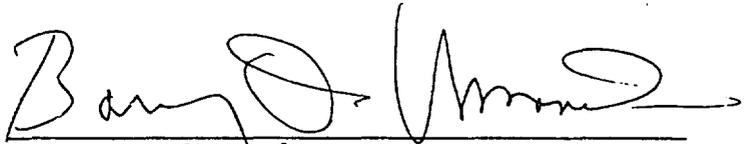
Respectfully submitted,

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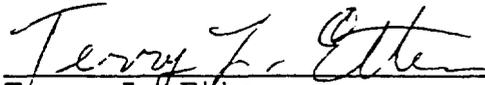


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⁹To the extent that such allotment and licensing activity might have some "preclusionary" effect over what might be other proposals for allotments and construction permits, we believe that effect would be minimal. First, NAB expects the Commission to expedite the requested rulemaking proceeding such that the agency, its regulatees and the public would obtain near-term certainty as to the allocations and licensing criteria that will govern the FM service. Also, NAB expects that the substantive rule changes that ultimately will be adopted by the Commission will be based on a determination that certain "preclusionary" effects might well better serve the public interest than a continuation of allotment and licensing policies that would artificially increase the number of FM transmitting facilities.



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Attachment: NAB Petition for Rule Making

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